

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 127

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO ANIMALS; CLARIFYING PROVISIONS OF CRIMINAL LAW
REGARDING TAKING CRUELLY TREATED ANIMALS INTO CUSTODY; AMENDING
THE LIVESTOCK CODE REGARDING CRUELLY TREATED ANIMALS; PROVIDING
FOR SECURITY IN AMOUNTS NEEDED FOR THE CARE OF ANIMALS SEIZED
IN COMMISSION OF CRUELTY TO ANIMALS CASES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-18-1.2 NMSA 1978 (being Laws 1999,
Chapter 107, Section 3) is amended to read:

"30-18-1.2. DISPOSITION OF SEIZED ANIMALS.--

A. If the court finds that ~~the~~ a seized animal is
not being cruelly treated and that the animal's owner is able
to ~~adequately~~ provide for the animal adequately, the court
shall return the animal to its owner.

B. If the court finds that ~~the~~ a seized animal is

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underscored material = new
[bracketed material] = delete

1 being cruelly treated or that the animal's owner is unable to
2 [~~adequately~~] provide for the animal adequately, the court shall
3 hold a hearing to determine the disposition of the animal.

4 C. An agent of the New Mexico livestock board, an
5 animal control agency operated by the state, a county or a
6 municipality, or an animal shelter or other animal welfare
7 organization designated by an animal control agency or an
8 animal shelter, in the custody of which an animal that has been
9 cruelly treated has been placed may petition the court to
10 request that the animal's owner be ordered to post security to
11 indemnify the costs incurred to care and provide for the seized
12 animal pending the disposition of any criminal charges of
13 committing cruelty to animals pending against the animal's
14 owner. The security shall be in an amount sufficient to secure
15 payment of all reasonable expenses expected to be incurred in
16 caring and providing for the animal pending disposition of the
17 criminal charges.

18 D. The court shall determine the amount of security
19 while taking into consideration all of the circumstances of the
20 case and may conduct periodic reviews of its order. If the
21 posting of security is ordered, the animal control agency,
22 animal shelter or animal welfare organization may draw from the
23 security to indemnify the costs incurred to care and provide
24 for the seized animal pending disposition of the criminal
25 charges.

1 E. If the owner of the animal does not post
2 security within fifteen days after the issuance of the order,
3 or if, after reasonable and diligent attempts the owner cannot
4 be located, the animal shall be deemed abandoned and
5 relinquished to the animal control agency, animal shelter or
6 animal welfare organization for adoption or humane destruction;
7 provided that if the animal is livestock other than poultry
8 associated with cockfighting, the animal may be sold pursuant
9 to the procedures set forth in Section 77-18-2 NMSA 1978.

10 F. Nothing in this section shall prohibit an owner
11 from voluntarily relinquishing an animal to an animal control
12 agency or shelter in lieu of posting security. A voluntary
13 relinquishment shall have no effect on the disposition of any
14 criminal charges alleging that the owner has committed cruelty
15 to animals.

16 [~~G.~~] G. Upon conviction, the court [may] shall
17 place the animal [for adoption] with an animal shelter or
18 animal welfare organization for placement or [provide] for
19 [the] humane destruction [of the animal].

20 H. As used in this section, "livestock" means all
21 domestic or domesticated animals that are used or raised on a
22 farm or ranch and exotic animals in captivity and includes
23 horses, asses, mules, cattle, sheep, goats, swine, bison,
24 poultry, ostriches, emus, rheas, camelids and farmed cervidae
25 but does not include canine or feline animals."

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1 Section 2. Section 30-18-1.3 NMSA 1978 (being Laws 1999,
2 Chapter 107, Section 4) is amended to read:

3 "30-18-1.3. COSTS.--

4 A. Upon conviction, ~~[the]~~ a defendant ~~[may]~~ shall
5 be liable for the cost of boarding the animal and all necessary
6 veterinary examinations and care provided to the animal. The
7 amount of these costs shall be offset by the security posted
8 pursuant to Section 30-18-1.2 NMSA 1978. Unexpended security
9 funds shall be returned to the defendant.

10 B. In the absence of a conviction, the seizing
11 agency shall ~~[bear the costs of boarding the animal and all~~
12 ~~necessary veterinary examinations and care of the animal during~~
13 ~~the pendency of the proceedings]~~ return the animal, if not
14 previously relinquished, and all unexpended amounts of the
15 security posted pursuant to Section 30-18-1.2 NMSA 1978."

16 Section 3. Section 77-18-2 NMSA 1978 (being Laws 1987,
17 Chapter 151, Section 1, as amended) is amended to read:

18 "77-18-2. SEIZURE AND DISPOSITION OF CRUELLY TREATED
19 LIVESTOCK.--

20 A. If a livestock inspector or other peace officer
21 has reason to believe that livestock ~~[are]~~ is being cruelly
22 treated, ~~[he]~~ the inspector or peace officer may apply to a
23 ~~[magistrate]~~ court in the county where the livestock ~~[are]~~ is
24 located for a warrant to seize the allegedly cruelly treated
25 livestock.

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1 B. On a showing of probable cause to believe that
2 the livestock [~~are~~] is being cruelly treated, the [~~magistrate~~]
3 court shall issue a warrant for the seizure of the livestock
4 and set the matter for hearing as expeditiously as possible
5 within thirty days unless good cause for a later time is
6 demonstrated by the state. Seizure as authorized by this
7 section shall be restricted to only those livestock allegedly
8 being cruelly treated. The board by rule shall establish
9 procedures for preserving evidence of alleged cruel treatment
10 of livestock.

11 C. [~~The~~] If criminal charges are filed against the
12 owner, the court shall, upon proper petition, proceed to
13 determine if security is required to be posted pursuant to
14 Section 30-18-1.2 NMSA 1978. Otherwise, the judge or
15 magistrate executing the warrant shall notify the board, have
16 the livestock impounded and give written notice to the owner of
17 the livestock of the time and place of [~~the magistrate court~~] a
18 hearing to determine disposition of the livestock.

19 D. [~~After~~] All interested parties [~~have been~~],
20 including the district attorney, shall be given an opportunity
21 to present evidence at the hearing, and if the court finds that
22 the owner has cruelly treated the livestock, the court shall
23 order the sale of the livestock at fair market value or order
24 humane destruction. If the livestock is ordered sold, the sale
25 shall occur within ten days of the order. If the court does

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1 not find that the owner has [~~so~~] cruelly treated the livestock,
2 the court shall order the livestock returned to the owner.

3 E. If the [~~magistrate~~] court orders the sale of the
4 livestock, the board shall take proper action to ensure the
5 livestock is sold at fair market value, including acceptance of
6 reasonable bids or sale at auction. A bid by the owner of the
7 livestock or [~~his~~] the owner's representative shall not be
8 accepted.

9 F. Proceeds from the sale of the livestock shall be
10 forwarded to the [~~magistrate~~] court ordering the sale. From
11 these proceeds, the [~~magistrate~~] court shall pay all expenses
12 incurred in caring for the livestock while it was impounded and
13 any expenses involved in its sale. Any excess proceeds of the
14 sale shall be forwarded to the former owner. If the expenses
15 incurred in caring for and selling the livestock [~~are more~~
16 than] exceed the amount received from the sale, the
17 [~~magistrate~~] court shall order the former owner to pay the
18 additional cost."